HIGH COURT OF UTTARANCHAL AT NAINITAL.

First Appeal No.235 of 2001
Old F.A. No. 226 of 1987

1. State of U.P. Through the Collector Dehradun.
2. U.P.Avas Evam Vikas Parishad Lucknow,
   104, M.G.Marg, Lucknow.

… Appellants

Versus

1. Prahlad Swarup,
2. Mahabir Prasad,
3. Satya Narain, Sons of Tulsi Ram,
4. Smt. Vimla Devi widow of late Suraj Prasad,
5. Virendra Kumar Son of Suraj Prasad
6. Km. Rekha aged 16,1/2 lyears d/o late Suraj Prasad,
7. Km. Raj Kumari aged 10,1/2 years, D/O late Suraj Prasad,
8. Km. Basanti aged 8 years, D/O late Suraj Prasad, The respondent no. 6 to 8 under guardianship of Smt. Vimla Devi, mother aforesaid, All residents of 46 Aaraghar Dehradun.

Sri Nand Prasad, learned Standing Counsel for the appellant no.1.
Sri K.S.Mehta, Adv., learned counsel for the appellant no.2.
Sri Arvind Vashist, learned counsel for the respondent-claimants.

Date November 16, 2006

Hon. B.S. Verma, J.

This appeal under Section 54 of the Land Acquisition Act is directed against the judgment and award dated 22-10-1986 passed by the Additional District Judge, Dehradun in Misc. Case (Review) No. 36 of 1985 arising out of Land acquisition Reference No. 65 of 1980, Sri Prahlad Swarup and others Vs. Collector Dehradun, whereby the learned Reference Court decided review petition in favour of the claimant-respondents holding that the claimants are entitled to solatium @ 30% in view of the amended Section 23(2) of the Land Acquisition Act (***for Short the Act)*** as well as interest @ 15% in view of amended provisions of Section 28 of the Act. The learned Reference Court has decided Review Petitions No. 20 of 1985, 31 of 1985, 32 of 1985, 33 of 1985, 34 of

1985, 35 of 1985, 36 of 1985, 37 of 1985, 38 of 1985, 40 of 1985, 41 of 1985, 44 of 1985, 46 of 1985, 47 of 1985 and 61 of 1985 by a common judgment, which have arisen out of the different Land Acquisition References decided on 27-9-1984 relating to the same award passed by the Special Land Acquisition Officer. It may be added that the controversy involved in all these review petitions was the same and identical.

The impugned order has been challenged on the ground that the appellant no.2 U.P. Avas Evam Vikas Parishad was required to pay the compensation to the claimant-respondents was not arrayed as respondents or the opposite parties in the land acquisition reference or the review application, therefore, the judgment and decree passed against the U.P.Avas Evam Vikas Parishad is patently against the Rule of Natural Justice.

The Review Applications were filed by the claimant-respondents for review of the order dated 27-9-1984 passed in the Land Acquisition Case with a prayer to grant solatium @ 30% instead of 15% and interest @ 15% instead of 6% in view of the amended Act No. 68 of 1984.

The short controversy before the Reference Court was whether review petitioners were entitled for the enhanced solatium and interest as have been amended by the Act No. 68 of 1984 in view of Section 23(2) and Section 28 of the Land Acquisition Act No. 1 of 1894.

The learned Additional District Judge has relied upon the judgment of the Apex Court in the case of "***Bhag Singh and others V. Union Territory of Chandigarh [AIR, 1984, Supreme Court, 1576]*** in which it was held that the provisions of Section 23(2) and 28 are applicable to all proceedings relating to compensation pending on the date of commencement of amending

Act or filed subsequent to that date whether before the Collector or before the court or High Court or Supreme Court.

Learned counsel for the Avas Evam Vikas Parishad Sri K.S.Mehta and learned Standing Counsel Sri Nand Prasad for the State vehemently argued that the judgment passed by the Apex Court in ***Bhag Singh case (sputa)*** has been over-ruled by the Constitution Bench judgment passed in the case ***of "Union of India and another V. Raghubir Singh (dead) by Lrs. Etc." "Prithpal Singh and others Vs. Union of India", Ram Mehar Rajkumar and others etc. V. Union of India and others" and "Delhi Cattle Breeding Farms Pvt. Ltd etc. V. Union of India" [(1989) 2, Supreme Court Cases, Page 754].***

It has been held by the Constitution Bench of the Apex Court that the benefit of the amended Act would apply only to the awards made by the Collector or Court between 30th April, 1982 and September 24, 1984 and not before. The benefits extend to appeals decided by them in respect of such awards only decided any time after April 30, 1982 and the benefits of the amended provisions cannot be granted by the High Court or the Supreme Court in respect of the award made by the Collector or court prior to 30th April, 1982 and the judgment rendered by the Apex Court in ***Bhag Singh and others V. Union Territory of Chandigarh [AIR, 1985, Supreme Court, 1576]*** and ***State of Punjab V. Mohinder Singh and another [AIR, 1987, Supreme Court, 758]*** have been over-ruled.

It is not disputed that the award by the Reference Court was passed on 27-9-1984 after the enforcement of the amended provisions. It is pertinent to mention here that the Act No. 68 of 1984 came into force on 24-9-1984. It is not an award by the court made between 30-4-1982 and 24-9-1984. Even though in view of the Constitution Bench judgment, referred to above, the respondent-review petitioners are also entitled to the enhanced

solatium and interest even if the award had been passed between April 30, 1982 and September 24, 1984.

Now the only question remains whether in view of the Apex Court judgment in the case of ***"U.P.Awas Evam Vikas Parishad vs Gyan Devi (Dead) by LRS and others" [(1995) 2 Supreme Court Cases, page 326],*** this appeal can be remanded to the Reference Court for a fresh decision on the ground that in the review petition, the U.P.Awas Evam Vikas Parishad was not a party and being not heard by the Reference Court.

The initial award by the Reference Court was passed on 27-9-1984, which has not been challenged before this Court in appeal and on the point of quantum of compensation, the judgment of the Reference Court has become final. If the case is remanded only on this legal issue, that will be a futile, exercise. The appeal is a continuation of the trial or reference and here U.P.Avas Evam Vikas Parishad itself has filed the appeal and I have heard at length Mr. K.S.Mehta, learned counsel, on this point. I do not find any force in the contention raised by the appellant on the ground that the review petitioners were not entitled for the enhanced solatium and interest awarded by the Reference Court.

For the reasons aforesaid, the present appeal is devoid of merit and is liable to be dismissed.

The appeal preferred by the State and U.P.Avas Evam Parishad is hereby dismissed. No order as to costs.

(B.S. Verma, J.)

RCP